Office Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

80-1446

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. _____

IRENE LAVIN,

Petitioner,

vs.

COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

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Attorney for Petitioner

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QUESTIONS PRESENTED

1. Whether the "rational basis" standard for review of equal protection issues is insufficient and a type of "middle-tier" review more appropriate:

(a) where a state establishes a multi-stage procedure for admission to its bar;

(b) where an applicant passes each of three required examinations, spread over a period of at least three years; and

(c) where discriminatory grading rules are employed on the fourth and final examination.

2. Whether the reasons given by California in support of the rules for grading the final stage of its bar admission procedure provide a "rational basis" for the discriminatory nature of those rules.

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The "Rational Basis" Standard for Review of Equal Protection Issues Is Insufficient Where a State (a) Establishes a Multi-Stage Procedure for Admission to its Bar, (b) Where an Applicant Passes Each of the First Three Required Examinations and (c) Where Discriminatory Grading Rules Are Employed on the Fourth and Final Examination 6

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In the Supreme Court of the United States

OCTOBER TERM, 1980

No. _____

IRENE LAVIN,

Petitioner,

vs.

COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

INTRODUCTION

An applicant for admission to the California bar faces many qualifying standards, including a two-part general bar examination where a 70 percent score is deemed passing. Applicants may opt to take the parts of the general examination at separate sessions. This petition raises constitutional issues concerning different and more onerous grading rules applied to applicants who exercise the latter option.

Petitioner has been denied admission to the California bar after achieving a passing score on every required examination except one portion of the two-part general examination. Her most recent scores on the two parts of the general examination were, in combination, above 70 percent and therefore sufficient to pass. Had she achieved those scores in a single session of the examination, the scores would have been combined and she would have been admitted to practice in California. However, for reasons which petitioner contends are constitutionally inadequate, California refuses to combine the scores of applicants who take the two parts of the general examination in separate sessions, requiring only those applicants to obtain a 70 percent or better score on each part.

QUESTIONS PRESENTED

1. Whether the "rational basis" standard for review of equal protection issues is insufficient and a type of "middle-tier" review more appropriate: (a) where a state establishes a multi-stage procedure for admission to its bar; (b) where an applicant passes each of three required examinations, spread over a period of at least three years; and (c) where discriminatory grading rules are employed on the fourth and final examination.

2. Whether the reasons given by California in support of the rules for grading the final stage of its bar admission procedure provide a "rational basis" for the discriminatory nature of those rules.

PARTIES TO THE PROCEEDING

The parties to this proceeding are stated in the caption. Petitioner is Irene Lavin. Respondent is the Committee of Bar Examiners of the State Bar of California (the "Committee").

OPINIONS BELOW

There are no reported opinions in this matter. The orders of repondent Committee and of the California Supreme Court are set forth in Appendices A, B and C.

GROUNDS FOR JURISDICTION

Petitioner seeks review of the November 26, 1980 order of the California Supreme Court denying her petition for a writ of review. Jurisdiction is conferred upon this Honorable Court pursuant to 28 U.S.C. § 1257, subd. (3).

CONSTITUTIONAL PROVISIONS INVOLVED IN THIS PROCEEDING

The constitutional provision involved in the present proceeding is contained in the Fourteenth Amendment, as follows:

> "Section 1. . . . No State shall make or enforce any law which shall abridge the privileges or immunity of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

A. Procedural History.

Following notice that she had not passed California's Spring 1980 general bar examination, petitioner petitioned the Committee of Bar Examiners of the State Bar of California for admission to the practice of law, asserting, among other items, that her most recent scores on the two parts of the examination were sufficient, in combination,

to pass. On June 25, 1980, the Committee denied the petition. (See Appendix A.)

Petitioner filed a formal petition on July 3, 1980 for reconsideration. On July 26, 1980, the Committee granted the petition for reconsideration and, upon reconsideration, again denied the petition for admission to practice in California. (See Appendix B.)

Petitioner next filed a petition for writ of review with the California Supreme Court pursuant to Cal. Business & Professions Code § 6066 and Rule 952(c), Cal. Rules of Court. See also, *Chaney v. State Bar of California*, 386 F.2d 962, 966 (9th Cir. 1967). Respondent Committee filed an opposition and petitioner filed a reply. The California Supreme Court then denied the petition, without opinion, on November 26, 1980. (See Appendix C.)

B. Facts.

Prior to entering law school, petitioner passed an equivalency examination required by Cal. Business & Professions Code § 6060(c)(2) and Rule VIII, §§ 81 and 82, Rules Regulating Admission to Practice Law in California. The examination was required because petitioner's university credits and nursing school degree did not qualify her for exemption from the examination.

The next year petitioner also passed a first year law students' examination given by the Committee pursuant to Cal. Business & Professions Code § 6060(g) and Rule VI, § 61, Rules Regulating Admission to Practice Law in California.

Following her graduation from law school, petitioner passed one part of the final bar examination, known as the Professional Responsibility Examination, as required by Cal. Business & Professions Code § 6060(f) and Rule

XI, §§ 111, 113 and 114, Rules Regulating Admission to Practice Law in California.

Petitioner attempted on several occasions to pass the only remaining test, the general bar examination. The latter consists of two sections, the Multistate Bar Examination section (weighted 40 percent of the total score) and an essay section (weighted 60 percent of the total score). On the Fall 1979 California general bar examination petitioner received 437 of a possible 600 points or 72.8 percent, on the Multistate Bar Examination section. On the Spring 1980 general bar examination, she obtained 617.5 of a possible 900 points, or 68.6 percent, on the essay section. Petitioner's combined score on the two sections of the examination was 1,054.5 points of a possible 1,500, or 70.3 percent.

Respondent Committee applies two separate rules for achieving a passing grade on the general bar examination. An applicant who takes both sections of the examination at one session need achieve only a 70 percent score on the *combined* sections of the examination. However, an applicant who elects under the Committee's rules to take the sections of the examination in separate sessions is required to obtain a 70 percent or better score on *each* section in order to pass. Accordingly, an applicant who achieves an 80 percent score on the essay section and a 55 percent score on the Multistate section has a 70 percent overall score and passes the examination. In an extreme case, an applicant taking the examination in a single session can pass with 100 percent (900 points) on the essay section and *25 percent* (150 points) on the Multistate section! On the other hand, an applicant such as petitioner who achieves a higher overall score (1054.5 points) and with more consistency (72.8 percent and 68.6 percent), fails.

PRESENTATION OF FEDERAL QUESTIONS

The federal constitutional issues raised in this petition were presented in the petition for reconsideration addressed to the Committee of Bar Examiners and in the petition for writ of review with the California Supreme Court. The questions were based upon the same facts set forth in the present petition.

ARGUMENT

I.

THE "RATIONAL BASIS" STANDARD FOR REVIEW OF EQUAL PROTECTION ISSUES IS INSUFFICIENT WHERE A STATE (a) ESTABLISHES A MULTI-STAGE PROCEDURE FOR ADMISSION TO ITS BAR, (b) WHERE AN APPLICANT PASSES EACH OF THE FIRST THREE REQUIRED EXAMINATIONS AND (c) WHERE DISCRIMINATORY GRADING RULES ARE EMPLOYED ON THE FOURTH AND FINAL EXAMINATION.

A. The "Rational Basis" and "Strict Scrutiny" Standards For Review Of Equal Protection Issues Are Too Limited; "Middle-Tier" Review Is Frequently The Best Alternative.

There is a wide consensus that the two-tier approach ("rational basis" and "strict scrutiny") to review of equal protection issues is inadequate. Indeed, opinions of this Court have suggested that the system is unsatisfactory and have noted the Court's occasional application of what amounts to a "middle-tier" approach. See, for example, *Craig v. Boren* (1976) 429 U.S. 190, 210-211 (Justice Powell concurring):

> " . . . . [*Reed v. Reed*, 404 U.S. 71 (1971)] and subsequent cases involving gender-based classifications make clear that the Court subjects such classifications to a more critical examination than is normally applied when 'fundamental' constitutional rights and 'suspect classes' are not present. . . . As has been true of *Reed* and its progeny, our decision today will be viewed by some as a 'middle tier' approach. . . . "

Petitioner submits the time is ripe for overt recognition of each of the above facts. The ends of justice and the need for greater flexibility and realism in review of equal protection questions will be served.

Petitioner does not suggest that the "rational basis" standard should cease to be applied in the majority of cases which come before this Court. On the contrary, in most cases where fundamental constitutional rights and suspect classifications are not involved, the rational basis standard of review will no doubt lead to a just determination concerning a state's attempt to distinguish or "draw lines" between persons in similar circumstances. However, there are and always will be situations where a state's attempts at drawing lines or distinctions should be subjected to a more exacting examination. The alternative is to forego the opportunity for a realistic and just result in such cases. Conversely, to impose "strict scrutiny" in each of the latter instances will often lead to equally unrealistic and unjust ends. Overkill has no more place in attempts to protect constitutional rights than does neglect.

The solution, which can hardly be the subject of debate, is application of a middle-tier approach. The questions thus become what sort of approach or approaches to adopt and when to apply them. The scope and purpose of the present petition make it inappropriate to discuss all possible instances where a middle-tier approach might be

wise. However, California's discriminatory bar examination grading system is surely one appropriate instance because petitioner's situation falls between a procedurally simple licensing scheme, where a "rational basis" standard is applied, and a licensing rule based upon a suspect classification, invoking "strict scrutiny" review. Compare *Kotch v. Board of River Port Pilot Commissioners*, 330 U.S. 552 (1947) [Six-month apprenticeship requirement upheld under "rational basis" standard.]; *In re Griffiths*, 413 U.S. 717 (1973) ["Strict scrutiny" standard applied to review of Connecticut law precluding resident aliens from being admitted to bar.].

The examination procedure for admission to California's bar is neither simple nor expeditious. Rather, petitioner and other California bar applicants must pass several examinations, given over a period of years. For example, upon her entry into law school, petitioner was required to take an equivalency examination since her existing university credits and nursing school degree were not treated as the equivalent of a standard bachelor's degree. Next, petitioner was required to take a first year law students' examination at the conclusion of her initial year in law school. Following her graduation from law school, she was required to take a professional responsibility examination. Finally, she was required to take California's general bar examination which, in turn, consisted of two parts, the Multistate Bar Examination and an essay section. As noted previously, petitioner separately passed each and every required examination except the second (essay) portion of the general bar examination. Her combined scores on the two-part general examination were sufficient to pass but for the Committee's rules which forbid combining of her scores.

Petitioner submits that where a state requires an applicant for any license to take a series of qualifying

examinations over a period of years, application of the mere "rational basis" standard of review to discriminatory grading rules on the last of those examinations is woefully inadequate. A state simply should not be allowed to subject an applicant to many years of differing tests and examinations without bearing the concomitant burden of submitting its grading rules for the last of such examinations to more intensive review than "rational basis."

It is appropriate at this point to note that petitioner is not suggesting a lengthy, multi-step licensing procedure bestows upon an applicant, at some point in the process, a "vested" or "fundamental" right. Petitioner does assert, however, that by requiring such a lengthy undertaking of an applicant, a state should be deemed to subject any discriminatory grading rules applied at the end of the process to a standard of equal protection review more exacting than an easily met rational basis approach, since the latter is most commonly applied to a simple, one-step licensing process.

B. "Middle-Tier" Review Is Suitable To The Present Case.

Several types of "middle-tier" review of equal protection issues have been suggested by the cases and by commentators. For example, one type may be described as weighing the state's need for imposing the subject classification. Such an approach has been suggested in several cases, including *Hampton v. Mow Sun Wong*, 426 U.S. 88, 115-116 (1976) [argument of administrative convenience rejected when compared to the interest of the individual involved]; *Stanley v. Illinois*, 405 U.S. 645, 656 (1972) [" . . . establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher

values than speed and efficiency."]; *Vlandis v. Kline*, 412 U.S. 441, 458-459 (1973) [" . . . as the Court's assessment of the weight and value of the individual interest escalates, the less likely it is that mere administrative convenience and avoidance of hearings or investigations will be sufficient to justify what otherwise would appear to be irrational discriminations." (White, J., concurring in judgment)].

As discussed below, California has not sought to justify its discriminatory grading rules for its bar examinations on the basis of administrative convenience. Therefore, this particular middle-tier approach to review seems inapplicable here.

A second type of middle-tier review is to require modification of the challenged rule to permit exceptions in individual cases, without invalidating the rule in its entirety. In *Craig v. Boren, supra,* 429 U.S. 190, 199, the Court suggested such an approach in a case involving gender-based discrimination:

> "In light of the weak congruence between gender and the characteristic or trait that gender purported to represent, it was necessary that the legislatures choose either to realign their substantive laws in a gender-neutral fashion, or to adopt procedures for identifying those instances where the sex-centered generalization actually comported to fact."

As with the first suggested method of middle-tier review, this approach appears unsuitable to the present case. If the challenged rule violates equal protection as to this petitioner, it should also be deemed to violate equal protection as to all others similarly situated.

A third technique, however, seems especially pertinent here. This approach would require the rationale for a

particular rule to be asserted by the state in the litigation in which the rule is challenged, based upon the origin and application of the rule, rather than permitting justification of the rule on the basis of a judicially created or conceivable rationale never offerred by the state in its defense. See *Griswold v. Connecticut*, 381 U.S. 479, 505 (1965) ["There is no serious contention that Connecticut thinks the use of artificial or external methods of contraception immoral or unwise in itself, or that the anti-use statute is founded upon any policy of promoting population expansion." (White, J., concurring.)]

This approach is the least onerous "middle-tier" technique since it provides for review of the challenged rule on the basis of reasons given and presumably considered by the originating state, denying the state only the fortuitous benefit it would obtain if the rule were approved for reasons that had no bearing on the enacting process.

The latter approach is most compatible to the situation existing in the present case. As discussed in Argument II, below, the State Bar of California has suggested specific reasons in support of a "rational basis" for its discriminatory grading rules. Petitioner contends that this Court should review those rules solely on the basis of the reasons given by the state. If those reasons constitute a "rational basis" for the discriminatory rules, then petitioner acknowledges the ultimate lack of merit of this petition. However, as will be demonstrated in Argument II below, the state's purported reasons do not provide such a rational basis and neither this Court nor any other court should attempt to discover and articulate other reasons on its own motion. Accordingly, certiorari should issue here and California's discriminatory grading rules for its bar examinations should be found to violate equal protection.

II.

CALIFORNIA'S COMMITTEE OF BAR EXAMINERS HAS NOT STATED ANY "RATIONAL BASIS" FOR ITS DISCRIMINATORY GRADING RULES.

Petitioner contends that respondent Committee has failed to state a rational basis for requiring those who take the two sections of the general bar examination in separate sessions to achieve separate passing scores while permitting those who take the parts in one session to combine their two scores to achieve a passing grade.

Before discussing the reason given by the Committee as a purported rational basis for its discriminatory grading rules, petitioner briefly summarizes relevant standards which have been applied to state administered bar examinations.

In *Schware v. Board of Bar Examiners of State of New Mexico*, 353 U.S. 232, 238-239 (1957), this Court articulated the basic requirements imposed by the Fourteenth Amendment upon the state's rules regulating admission to the practice of law:

> "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. [Citations.] A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. [Citations.]"

Under the above principles, it has been held that an essay-type bar examination "has a rational connection

with the capacity to practice law . . . . " *Chaney v. State Bar of California*, 386 F.2d 962, 964 (9th Cir. 1967). However, a limitation on the number of times an applicant may take a state's bar examination was declared unconstitutional in *Younger v. Colo. State Bd. of Bar Examiners*, 482 F.Supp. 1244, 1247 (D. Colo. 1980):

> " . . . . Yet, the application of a rule which effectively places a final limitation on the number of examinations an individual may take appears to be based upon an assumption that a given individual will never become competent. That amounts to a prejudgment of the examination results. It could also be considered to create an irrebuttable presumption of incompetence of the type which has been found to be constitutionally infirm in several cases. [Citations.]
>
> "There is no basis for faulting any standard requirements of additional study, training, or development prior to any re-examination. What is now declared unconstitutional is only the final preclusion of any opportunity for re-examination regardless of such requirements. That aspect of Rule 214 cannot be considered to have a rational connection with the compelling interest in requiring a demonstration of professional competence by successful completion of a written examination before admission to the Bar."

With the above rules in mind, we turn to the grounds given by respondent Committee in the present proceeding in support of the rule upon which petitioner's admission to the California bar was denied. In its opposition to issuance of a writ of review by the California Supreme Court, the Committee contended that the rule prohibiting the combining of scores from sections of the general bar examination taken separately was intended to prevent an applicant

from passing the examination as a result of a chance fluctuation in scores. As stated in a declaration filed in support of the Committee's opposition, "The requirement that only a passing status and not the score on a part be transferred across examinations was adopted so as to prevent an applicant from passing the [general bar examination] solely as the result of such chance fluctuation in scores. This requirement need not be imposed when an applicant takes the [two sections] concurrently, since it is highly unlikely that an applicant will be lucky on both parts at the same time." (Memorandum in Response to Petition for Review, Appendix C, Para. 9.)

The latter reasoning provides no rational basis for the discriminatory grading rules applied to petitioner. Neither the Committee's reasoning nor mathematical principles demonstrate that the probability of chance fluctuation in an applicant's scores on either or both parts of the general bar examination are in any way dependent upon whether the applicant takes the two parts at the same or different sessions. The Committee has in effect suggested that the laws of probability favor "heads" over "tails" in a given number of coin flips if, in a previous equal number of coin flips, tails prevailed over heads. No expertise in the laws of probability is necessary to recognize the fallacy in such reasoning. The laws of probability do not change with regard to coin flips or with regard to separate portions of an examination on the basis of preceding events.

In short, the Committee failed to demonstrate that an applicant's chances for passing the general bar examination are enhanced by the laws of probability where an applicant takes the two sections of the examination at separate sessions. Since this was the only argument offerred by the Committee as a rational basis for the discriminatory grading rules, petitioner submits that the

rules should be found to violate equal protection of the laws.

CONCLUSION

Respondent Committee has failed to establish any rational basis for placing a more onerous grading requirement upon bar applicants who opt to take California's general bar examination at separate sessions. As shown above, only those reasons offered by the Commmittee in support of the discriminatory grading rules should be considered in reviewing petitioner's equal protection contentions. This "middle-tier" approach to equal protection review is appropriate where, as here, California has established a lengthy, multi-stage procedure for admission to its bar.

Accordingly, petitioner respectfully requests that this petition for writ of certiorari be granted and that the discriminatory grading rules applied to California's general bar examination be declared unconstitutional.

Respectfully submitted,

EDWARD J. HOROWITZ,
A Professional Corporation

By EDWARD J. HOROWITZ

Attorney for Petitioner

APPENDIX A

THE COMMITTEE OF BAR EXAMINERS

OF THE STATE BAR OF CALIFORNIA

ARMANDO M. MENOCAL, III, *Chair*
SAN FRANCISCO
HERBERT J. SOLOMON, *Vice Chair*
SAN DIEGO
FRANCISCO CANCINO
SAN FRANCISCO
MARTIN R. GLICK
SAN FRANCISCO
MARY ANNE HARRISON
BURBANK
ROBERT A. HINE
SOUTH PASADENA
PATRICIA PHILLIPS
LOS ANGELES
BERTRAM S. SILVER
SAN FRANCISCO
A. WALLACE TASHIMA
LOS ANGELES
WILLIAM H. WAYSMAN
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JOHN J. O'HARA, *Ex officio member*
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Member, Board of Managers
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KENNETH D. McCLOSKEY, *Director*
SAN FRANCISCO
Law School Accreditation
JOHN A. GORFINKEL, *Consultant*
SAN FRANCISCO

JAMES B. TIPPIN, JR.
Executive Director
SAN FRANCISCO

June 25, 1980

Reply to:
☒ LOS ANGELES
☐ SAN FRANCISCO

NOTICE OF COMMITTEE ACTION

Ms. Irene Lavin
646 Woodruff Avenue
Los Angeles, California 90024

Assigned Petition No. 1(b)

Dear Ms. Lavin:

Please receive this as official notice that the Committee of Bar Examiners of the State Bar of California while It was in formal session in Monterey, California during June 20, 1980 denied the petition which you previously filed wherein you sought certification for admission to practice law in California pursuant to the provisions of the State Bar of California, Chapter 4, Division 3, of the Business and Professions Code.

COMMITTEE OF BAR EXAMINERS
James B. Tippin, Jr.
Executive Director

By _____
Suzanne M. Obermeier
(Original signed)
Director
Operations & Management

Date: June 25, 1980

SMO:ag

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APPENDIX B

THE COMMITTEE OF BAR EXAMINERS

OF THE STATE BAR OF CALIFORNIA

ARMANDO M. MENOCAL, III, *Chair*
SAN FRANCISCO
HERBERT J. SOLOMON, *Vice-Chair*
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FRANCISCO CANCINO
SAN FRANCISCO
MARTIN R. GLICK
SAN FRANCISCO
MARY ANNE HARRISON
BURBANK
ROBERT A. HINE
SOUTH PASADENA
PATRICIA PHILLIPS
LOS ANGELES
BERTRAM S. SILVER
SAN FRANCISCO
A. WALLACE TASHIMA
LOS ANGELES
WILLIAM H. WAYSMAN
OAKLAND
JOHN F. O'HARA, *Ex-officio member*
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Member Board of Managers
National Conference of Bar Examiners

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Law School Accreditation
JOHN A. GORFINKEL, *Consultant*
SAN FRANCISCO

JAMES B. TIPPIN, JR.
Executive Director
SAN FRANCISCO

August 14, 1980

Reply to:
☒ LOS ANGELES
☐ SAN FRANCISCO

NOTICE OF COMMITTEE ACTION

Ms. Irene Lavin
646 Woodruff Avenue
Los Angeles, California 90024

Assigned Petition No. 1(e)

Dear Ms. Lavin:

Please receive this as official notice that the Committee of Bar Examiners of the State Bar of California while It was in formal session in Los Angeles, California during July 26, 1980 granted the petition which you previously filed wherein you sought a reconsideration of a previous denial and upon such reconsideration, denied your petition for admission to practice law in California.

COMMITTEE OF BAR EXAMINERS
James B. Tippin, Jr.
Executive Director

By _____

Suzanne M. Obermeier
(Original signed)
Director
Operations and Management

Date: August 14, 1980

JBT:sm

cc: Diane Alexander

APPENDIX C

SUPREME COURT
FILED
Nov. 26, 1980
LAURENCE P. GILL, Clerk

Deputy

ORDER DENYING WRIT OF REVIEW
L.A. No. 31336

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

IRENE LAVIN

v.

THE COMMITTEE OF BAR EXAMINERS,
THE STATE BAR OF CALIFORNIA.

Petition for writ of review DENIED.

BIRD *(Original signed)*
Chief Justice

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 3340 Ocean Park Boulevard, Suite 3005, Santa Monica, California 90405: that on February 24, 1981, I served the within *Petition for Writ of Certiorari* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Santa Monica, California, addressed as follows:

Clerk, U.S. Supreme Court
One First Street, N.W.
Washington, D.C. 20543
(Hand delivered; forty copies)

Clerk, California Supreme Court
350 McAllister Street, Room 4050
San Francisco, California 94102

Herbert M. Rosenthal
Truitt A. Richey, Jr.
State Bar of California
555 Franklin Street
San Francisco, California 94102

Robert M. Sweet
State Bar of California
1230 West Third Street
Los Angeles, California 90017

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 24, 1981 at Santa Monica, California.

Kirk W. Harney
(Original signed)